

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,211

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for medicaid. The issue is whether he has resources in excess of the program maximum.

FINDINGS OF FACT

The petitioner entered a nursing home in early July, 1992. At about that same time he applied for medicaid.⁽¹⁾ In determining the petitioner's eligibility a question arose as to the cash value of some insurance policies owned by the petitioner. The Department asked the petitioner's wife to verify the cash value of the policies and held off making an eligibility determination until she did so. In December, 1992, five months after the filing of the application, the Department still had not received verification of the policies, and it sent a notice to the family denying the petitioner's application.

Sometime thereafter, the petitioner's wife brought to the Department's attention a written statement from the petitioner's brother-in-law (the wife's brother) that as of November 16, 1992, he "took over ownership" of the petitioner's insurance policies as settlement of a debt owed to him by the petitioner and his wife. At that point, however, the Department had still not received any verification of what the policies were worth.

At the hearing (held on August 18, 1993), the Department indicated that it had subsequently determined that the value of the insurance policies placed the petitioner approximately \$1,500.00 over the medicaid resource limit (\$1,000.00). The Department indicated that its final decision in the case was that the petitioner was ineligible for medicaid due to excess resources until the petitioner provided verification from the insurance company that he had officially assigned ownership of the policies in question.⁽²⁾

Since July, the petitioner has remained in the nursing home without any payment on his bill, which has

been running at over \$2,000.00 per month. It is clear that if the petitioner's excess resources were applied to his bill, they would not have even covered his first month of care.

ORDER

The Department's decision is modified in that the petitioner is found ineligible for medicaid only until he incurred medical bills equal to the amount of his resources that were in excess of the program maximum. He is found eligible for medicaid as of the date his medical bills exceeded his excess resources.

REASONS

The medicaid regulations define resources as "cash, liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his/her support and maintenance." Medicaid Manual § M231 (emphasis added). The board has held, and common sense and fairness dictate, that when in retrospect it can be determined how long an individual could have used an excess resource to support and maintain himself, the individual is ineligible for medicaid only for as long as that excess resource would have held out. Fair Hearing No. 5574. In this case, once the exact amount of the petitioner's excess resources could be determined, it was clear that this amount would have been sufficient to cover less than even the first month of the petitioner's nursing home costs. After that time the resource would have been no longer sufficient "to be used for (the petitioner's) support and maintenance". Thus, at this time, in retrospect, it cannot be concluded that the petitioner's insurance policies met the above definition of a resource for more than one month.

Medicaid is a program based on need. The purpose of the above regulation is to require individuals to use their own income and resources to meet their medical needs before medicaid coverage is provided. Although medicaid coverage need not be provided until all income and resources are verified, the regulation is not meant to penalize ex post facto those individuals who are slow to verify their resources and who run up substantial medical bills during the process of verification.

The fact that the petitioner may have used the resource in question to settle a family debt rather than to pay for his nursing home care is of no consequence to the Department as long as he is found ineligible for medicaid until he incurred medical bills greater than the excess resource. As it is, the petitioner is probably eligible for less medicaid retroactively than he would have received if he had promptly verified the amount of the insurance policies and immediately transferred them to his brother-in-law (which he could have done without penalty).

The Department's decision is modified accordingly.

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1. The petitioner is incapacitated and his wife filed his application in his behalf. Throughout the application and appeal process the petitioner has also been assisted by a social worker at the nursing home.
2. It is not clear whether this has been done to date. As noted below, however, it is irrelevant to the disposition of this matter.